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**CERTIFIED PUBLIC ACCOUNTANT  
INTERMEDIATE LEVEL EXAMINATIONS**

**I1.3: COMPANY LAW**

**DATE: WEDNESDAY, 30 MARCH 2022**

**MARKING GUIDE AND MODEL ANSWERS**

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## SECTION A

### QUESTION ONE

#### Marking guide

a.

i.

**Marks**

**Category and types of companies** for M-Bank Rwanda Plc

- M-Bank Rwanda Plc is categorized as a *public company* 2
- a category assigned to it under law by its use of the abbreviation “*Plc*” which means “*Public limited company*” 1
- M-Bank Rwanda Plc may be classified a *company limited by shares* 1.5
- M-Bank Rwanda Plc may be classified a *company limited by shares and guarantee* 1.5

**Maximum marks:**

**6**

**ii. The minimum contents of M-Bank Rwanda Plc Memorandum of Association**

- The name of the Company: M-Bank Rwanda; 0.5
- The address of the registered office of the company: City of Kigali; 0.5
- The proposed business activity: banking activities; 1
- Category of the company: public company; 1
- Liability of the company: limited: 1
- The type of the company being incorporated: a company limited by shares or a company limited by shares and guarantee. 1
- The full name and address of every shareholder at incorporation; 1
- The class and number of shares which each shareholder has agreed to take, together with the consideration he or she has provided or is to provide for the issue of the shares. 1
- The full name and address of every shareholder at incorporation: **the names of and address of 5 shareholders** 0.5
- The class and number of shares which each shareholder has agreed to take, together with the consideration he or she has provided or is to provide for the issue of the shares: **different number of shares and voting rights.** 0.5

**Maximum marks:**

**6**

**iii. What happened in case a company does not have the Articles of Association**

In case a company does not have the Articles of Association, the rights, powers, duties, and obligations of the company, of the Board of Directors, of each director, and of each shareholder of the company **are those set out in the Law N°007/2021 of 05/02/2021 governing companies**

2

Maximum marks:

2

iv.

**A company is it a must to have Articles of Association under the Law governing companies in Rwanda**

No. I do not think a company must have Articles of Association as a rule as “*a company may or may not have articles of association*”.

2

However, “a protected cell company must file articles of association with the Registrar General”

1

Maximum marks:

3

**b. Difference between a company and a cooperative as business organizations**

**i. The acquisition of their legal personality**

- Incorporation of a company is administered by the Office of the Registrar General/Rwanda Development Board and when he is satisfied with the documents he issues a certificate of registration

1

- A company incorporated under the Law governing companies has its own legal personality separate from that of its shareholders and is a body corporate and a legal entity in its own rights and obligations separate from its shareholders or members

1

- A cooperative is registered by organ responsible for the development of Cooperative Organizations (Rwanda Cooperative Agency) with the following process:

After getting all documents required for application for the legal personality of a cooperative, Executive Secretary of the Sector verifies the compliance of the file with the legal requirements relating to the establishment of a cooperative as well as their accuracy and gives his or her approval or, where necessary, gives his or her comments in writing as to improvements that must be done. The person who is responsible for CO-AB Kigali SACCO obtains the certificate issued by the Sector submits an application for legal personality including the *proof of payment of legal registration fee* to the Rwanda Cooperative Agency which, if satisfied that the CO-AB Kigali SACCO qualifies for legal personality, immediately *issues within two days a provisional legal certificate of incorporation as a proof of legal registration with a validity of 12 months* and this certificate is submitted to CO-AB Kigali SACCO. After 12 months, *a full legal personality is issued by Rwanda Cooperative Agency and published in Official Gazette of Rwanda.*

2

Maximum marks:

4

**ii. The objective of M-Bank Plc and CO-AB Kigali SACCO**

- M-Bank Rwanda Plc like any other company is established for commercial purposes

2

- CO-AB Kigali SACCO is established for commercial purposes although as a cooperative it also pursues social and economic purpose to promote the welfare of its members

2

Model answers

(a)(i)

*Categorization* (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 5): M-Bank Rwanda Plc is categorized as a **public company**, a category assigned to it under law by **its use of the abbreviation “Plc”** which means “**Public limited company**”

*Typology* (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 11): M-Bank Rwanda Plc may **only** be classified a **company limited by shares** or a **company limited by shares and guarantee**.

(ii)

*Minimum contents of M-Bank Rwanda Plc* (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 20): M-Bank Rwanda Plc’s Memorandum of Association states the following:

- 1° the name of the Company: **M-Bank Rwanda**;
- 2° the address of the registered office of the company: **City of Kigali**;
- 3° the proposed business activity: **banking activities**;
- 4° category of the company: **public company**;
- 5° Liability of the company: **limited**;
- 6° the type of the company being incorporated: **a company limited by shares, or a company limited by shares and guarantee**
- 7° the full name and address of every shareholder at incorporation: **the names of and address of 5 shareholders**
- 8° the class and number of shares which each shareholder has agreed to take, together with the consideration he or she has provided or is to provide for the issue of the shares: **different number of shares and voting rights**.

(iii)

*The fate of the rights, powers, duties, and obligations of the company, of the Board of Directors, of each director, and of each shareholder of the company in case a company does not have the Articles of Association* (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 21). In case a company does not have the Articles of Association, the rights, powers, duties, and obligations of the company, of the Board of Directors, of each director, and of each shareholder of the company **are those set out in the Law N°007/2021 of 05/02/2021 governing companies**.

(iv)

*Articles of Association* (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 21).  
No. I do not think a company must have Articles of Association as a rule as “***a company may or may not have articles of association***”.

However, “***a protected cell company must file articles of association with the Registrar General***”.

(b) (i)

- *Acquisition of the legal personality by M-Bank Rwanda Plc* (See Law N° 007/2021 of 05/02/2021 governing companies, Arts. 3, 23 and 24): ***Incorporation (Administered by the Office of the Registrar General/Rwanda Development Board)***. One or more persons may form a company by pooling together resources or services for business purposes and filling out a prescribed form developed by the Registrar General in accordance with the provisions of the Law governing companies. Once the requirements for incorporation are complied with, the company duly incorporated, or its representative is given a ***certificate of incorporation*** in prescribed form stating the company’s registered name (M-Bank Rwanda Plc), the company’s registered code, the type of company incorporated and the company’s date of incorporation. **A company incorporated under the Law governing companies has its own legal personality separate from that of its shareholders and is a body corporate and a legal entity in its own rights and obligations separate from its shareholders or members.**
- *Acquisition of the Legal personality by CO-AB Kigali SACCO* ( See Law n° 024/2021 of 27/04/2021 governing Cooperatives in Rwanda, articles 65-71).
- A cooperative is registered by organ responsible for the development of Cooperative Organizations (Rwanda Cooperative Agency) with the following process:
- After getting all documents required for application for the legal personality of a cooperative, Executive Secretary of the Sector verifies the compliance of the file with the legal requirements relating to the establishment of a cooperative as well as their accuracy and gives his or her approval or, where necessary, gives his or her comments in writing as to improvements that must be done. The person who is responsible for CO-AB Kigali SACCO obtains the certificate issued by the Sector submits an application for legal personality including the *proof of payment of legal registration fee* to the Rwanda Cooperative Agency which, if satisfied that the CO-AB Kigali SACCO qualifies for legal personality, immediately ***issues within two days a provisional legal certificate of incorporation as a proof of legal registration with a validity of 12 months*** and this certificate is submitted to CO-AB Kigali SACCO. After 12 months, ***a full legal***

*personality is issued by Rwanda Cooperative Agency and published in Official Gazette of Rwanda.*

(ii)

- *Objective of M-Bank Rwanda Plc* (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 4). M-Bank Rwanda Plc like any other company, **is established for commercial purposes**.
- *Objective of CO-AB Kigali SACCO* (See Law n° 024/2021 of 27/04/2021 governing Cooperatives in Rwanda). The Law on cooperative organization does not assign any specific objective to a Savings and Credit Cooperative or any other form of cooperative organization. As a cooperative bank, CO-AB Kigali SACCO **is established for commercial purposes** although as a cooperative it also pursues social purpose to promote the welfare of its members.

## QUESTION TWO

### Marking guide

#### a. The types/classes of share capital as highlighted in this case

- Preference shares capital means part of the share capital which:
  - Carries a preferential right as to payment of dividend at fixed rate during the lifetime of the company 3
  - Carries, on the winding up of the company, a preferential right to be paid the amount of the capital paid up 3
- Equity shares capital means, with reference to a company, limited by shares, all share capital which is not preference share capital. 4

**Maximum marks: 10**

#### b. The legality of Kiruhura Investment Co. Plc on the conversion of 90 percent of its shares which are par value shares into a no-par value share

- The decision of the company to convert its redeemable shares into no-par value shares is *illegal as it was not backed by a seventy-five per cent (75%) of shareholders vote for the resolution (special resolution)* 5
- The company was required to give the notice on the terms of the conversion to the Registrar General for registration within fourteen days of approval of the conversion. The company also failed on the previous obligations towards the Registrar General. 3

Maximum marks:

8

**c. The Explanation on the resolution of the company to convert shares into no-par value shares will affect the rights and liabilities of Mahirwe and Mugisha**

- No, I do not think the decision of the company to convert its redeemable shares into no-par value shares will affect the rights and liabilities of Mahirwe and Mugisha (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 63) 1
- In case of conversion of par value shares into shares of no-par value, the rights and liabilities of shareholders attached to such shares are not affected. 3
- In particular, such conversation does not affect: any unpaid liability of such shares 1
- The rights of the holders of the shares in respect of dividends, voting, or repayment during the winding up of a company or in case of reduction of share capital 2

Maximum marks:

7

**Model answers**

a)

Types/classes of share capital:

- 1° **Preference share capital:** this means part of the share capital which *carries a preferential right as to payment of dividend at fixed rate during the life time of the company, carries, on the winding up of the company, a preferential right to be paid the amount of the capital paid up*
- 2° **Equity share capital:** this means, with reference to a company, limited by shares, *all share capital which is not preference share capital.*

b)

- *The legality of Kiruhura Investment Co. Plc on the conversation of 90 percent of its shares which are par value shares into a no-par value share (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 62).*
- *The decision of the company to convert its redeemable shares into no-par value shares is **illegal as it was not backed by a seventy-five per cent (75%) of shareholders vote for the resolution (special resolution).***
- *Also, even if the conversion was done in accordance with the provisions of the Article 62 of the Law governing companies, the company was required to **give the notice on the terms of the conversion to the Registrar General for registration within fourteen days of approval of the conversion.** The company also failed on the previous obligations towards the Registrar General.*

c)

**No.** I do not think the decision of the company to convert its redeemable shares into no-par value shares will affect the rights and liabilities of Mahirwe and Mugisha (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 63)

1° In case of conversion of par value shares into shares of no-par value, the *rights and liabilities of shareholders attached to such shares are not affected.*

2° In particular, such conversation does not affect: *any unpaid liability of such shares* (i) and *the rights of the holders of the shares in respect of dividends, voting, or repayment during the winding up of a company or in case of reduction of share capital* (ii).

### QUESTION THREE

#### Marking guide

##### a. Definition of debenture

- A debenture is a written acknowledgement of indebtedness issued by a company in respect of a loan made or to be made to it or to any other person or money deposited or to be deposited with the company or any other person or the existing indebtedness of the company or any other person whether constituting a charge on any of the assets or not. 5

**Maximum marks:** 5

##### b. The legality of the unanimous resolution of K & K Limited's shareholders allowing the company to invite the public to subscribe for its debentures

- The unanimous resolution of the shareholders of K & K Limited to allow the company to call the public to subscribe for its debentures is illegal as a private company has a characteristic prohibiting any invitation to the public to subscribe for any debentures of the company. 5

**Maximum marks:** 5

##### c. Answer on knowing if it did not issue any document deemed debenture and therefore cannot be held liable for violation of the law

- No. it has issued a debenture because the Law governing companies which clearly explains that: 2
- Any invitation to the public to deposit money or to lend money to a company is deemed to be an invitation to subscribe for or purchase debentures of the company. 4
- Any document that is issued or intended or required to be issued by a company acknowledging or evidencing or constituting an acknowledgement of the indebtedness of the company in respect of any money that is or may be deposited with or lent to the company in response to a public invitation is deemed a debenture. 4

**Maximum marks:** 10



## Model answers

a)

**Meaning of debenture** (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 2(40°)). **A debenture is a written acknowledgement of indebtedness issued by a company in respect of a loan made or to be made to it or to any other person or money deposited or to be deposited with the company or any other person or the existing indebtedness of the company or any other person whether constituting a charge on any of the assets or not.**

b)

*Legality of the unanimous resolution of K & K Limited's shareholders allowing the company to invite the public to subscribe for its debentures* (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 8). The unanimous resolution of the shareholders of K & K Limited to allow the company to call the public to subscribe for its debentures is **illegal as a private company has a characteristic prohibiting any invitation to the public to subscribe for any debentures of the company.**

c)

**No.** I am not of the view that K & K Limited did not issue any document deemed debenture. (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 51). In fact the company issued document deemed debenture in the context of the Law governing companies which clearly explains that:

1° **Any invitation to the public to deposit money or to lend money to a company is deemed to be an invitation to subscribe for or purchase debentures of the company.**

2° **Any document that is issued or intended or required to be issued by a company acknowledging or evidencing or constituting an acknowledgement of the indebtedness of the company in respect of any money that is or may be deposited with or lent to the company in response to a public invitation is deemed a debenture.**

## QUESTION FOUR

### Marking guide

#### a. The classes of shares available for K & G Ltd

Shares in a company may:

- Be ordinary; 1
  - Be redeemable; 1
  - Confer preferential rights to distribution of capital or income; 1
  - Confer special, limited or conditional voting rights; 1
  - Not confer any voting rights 1
- Maximum marks: 5**

#### b. How they can keep control of their company even if they are minority shareholders taking into account voting rights, distribution of capital or income, and classes of shares to be issued to other shareholders

For Komezza and Garuka to be able to control their company even if they are minority shareholders, they must do the following:

- They shall be the sole subscribers for the shares conferring preferential rights to distribution of capital or income, 1
- They shall be the sole subscribers for the shares conferring special voting rights 1
- Redeemable shares 1
- They shall allow other shareholders to subscribe for ordinary shares and shares conferring limited or conditional voting rights 1
- Shares not confer in any voting rights. 1

**Maximum marks: 5**

#### c. A company's prospectus

- a formal legal document designed to provide information and full details about an investment offering for sale to the public. It is a legal and regulatory disclosure document designed to prevent investors from claiming that they were not given all material information or that they were misled by the issuer. 3
- The document typically includes
  - A description of the shares and their terms and conditions. 0.5
  - A description of the issuer's (and, if applicable, the guarantor's) business and operations. 0.5
  - Financial information about the issuer (and guarantor). 0.5
  - A summary of the selling restrictions and tax provisions relating to the bonds. 0.5

**Maximum marks: 5**

**d. The concept “transfer of shares in K & G Plc”**

- Transfer of shares in K & G Plc (See Law N° 007/2021 of 05/02/2021 governing companies, Arts. 10, 75). Shares in K & G Plc as a public limited company are fully transferrable 3
- The shares in K & G Plc are transferred by the operation of law therefore, a share transfer form is not required for its transfer to be effective. 2

**Maximum marks:**

**5**

**Model answers**

a)

*Classes of shares available for K & G Ltd* (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 53). Shares in a company may

- 1° *be ordinary.*
- 2° *be redeemable;*
- 3° *confer preferential rights to distribution of capital or income;*
- 4° *confer special, limited or conditional voting rights;*
- 5° *not confer any voting rights.*

b)

For Komez and Garuka to be able to control their company even if they are minority shareholders, they must do the following:

- 1° they shall be the *sole subscribers for the shares conferring preferential rights to distribution of capital or income, shares conferring special voting rights and redeemable shares.*
- 2° they shall allow other shareholders *to subscribe for ordinary shares and shares conferring limited or conditional voting rights and shares not conferring any voting rights.*

c)

A company's prospectus is a *formal legal document designed to provide information and full details about an investment offering for sale to the public*. It is a legal and regulatory disclosure document designed to prevent investors from claiming that they were not given all material information or that they were misled by the issuer. The document typically includes:

- A description of the shares and their terms and conditions.
- A description of the issuer's (and, if applicable, the guarantor's) business and operations.
- Financial information about the issuer (and guarantor).
- A summary of the selling restrictions and tax provisions relating to the bonds.

d)

- *Transfer of shares in K & G Plc* (See Law N° 007/2021 of 05/02/2021 governing companies, Arts. 10, 75). Shares in K & G Plc as a public limited company are **fully transferrable**.
- The shares in K & G Plc are **transferred by the operation of law therefore, a share transfer form is not required for its transfer to be effective**.

## SECTION B

### QUESTION FIVE

#### Marking guide

**a. Do you think Sehene and Gashonga have interest in the transaction between Sehene, Gashonga & Sons Plc and SG Ltd? Explain.**

- Yes. Sehene and Gashonga have interest in the transaction between Sehene, Gashonga & Sons Plc. 1
- Sehene and Gashonga have interest in the company's transaction as the transaction in question was carried out between Sehene, Gashonga & Sons Plc and SG Ltd which is their company. As such, the two directors has a material financial interest in SG Ltd, which is a party to the transaction. 4

**Maximum marks: 5**

**b. Substantiate on the validity of the Board of Directors Resolution to allow Sehene, Gashonga & Sons Plc and SG Ltd to enter a FRW 100 billion for the latter to supply raw materials to the former**

- This resolution was passed by a vote of five directors out of nine including Sehene and Gashonga. 1
- The votes by Sehene and Gashonga are invalid as they have interest in the transaction. Under the aforementioned Article "A director who is interested in a transaction entered into or to be entered into by the company does not vote on a directors' resolution. Where he she votes, the vote is invalid." 3
- Therefore, the Resolution of the Board of Directors is invalid, null and without effect as it was passed by only 3 directors out of nine and among the directors who voted, Sehene and Gashonga were not allowed to by the Law. 1

**Maximum marks: 5**

**c. Do you think the failure by Sehene and Gashonga to disclose their interest in the contract between Sehene, Gashonga & Sons Plc and SG Ltd can invalidate this transaction? Explain**

- No. I do not think the failure by Sehene and Gashonga to disclose their interest in the contract between Sehene, Gashonga & Sons Plc and SG Ltd can invalidate it. 1
- The Law governing companies clearly shows under its Article 167 that “A failure by director to disclose his/her interest in the transaction does not affect the validity of any transaction entered into by the company, the director or controlling shareholder.” 4

**Maximum marks: 5**

**d. Explain whether Shareholders of Sehene, Gashonga & Sons Plc can invalidate the FRW 100 billion contract for supply of raw materials**

- The shareholders of Sehene, Gashonga & Sons are allowed to invalidate the FRW 100 billion transaction between Sehene, Gashonga and Sons Plc and SG Ltd as it was entered into by the company in which a director (Sehene and Gashonga) is in any way interested. It may be voided by the company within three (3) months of the transaction being disclosed to all the shareholders, whether by means of the Board of Directors’ annual report or otherwise, unless the company receives fair value under the transaction. 3
- Under this transaction, as it was demonstrated Sehene, Gashonga & Sons Plc did not receive the fair value under the transaction as the raw materials were being sold at twice the price of market for the same raw materials and consequently the law allows the company to void this transaction. 2

**Maximum marks: 5**

**e. Legality of the transaction by Sehene and Gashonga to buy shares in Sehene, Gashonga & Sons Plc**

- The transaction by Sehene and Gashonga to buy shares in Sehene, Gashonga & Sons Plc is illegal. 1
- This transaction is illegal because the two directors dealt in insider information to acquire the shares in Sehene, Gashonga & Sons Plc. Under the Law on capital markets (Art 42), an individual deemed to have engaged in insider dealing is a person who uses insider information to deal in capital market instruments which can influence the prices on the capital market. 4
- The transaction is illegal as it may constitute an offence of insider dealing is under the Law on capital market (Art. 69) and as such Sehene and Gashonga should be prosecuted for insider dealing. 1
- Consequently, “Any person who has an insider information and uses it in committing market abuse or in dealing in capital market instruments, commits an offence. Upon conviction, he or she is liable to imprisonment for a term of not less than three (3) years but not more than five (5) years and a fine of not less than eighty million Rwandan francs (FRW 80,000,000) but not more than

one hundred million Rwandan francs (FRW 100,000,000)”.

4

**Maximum marks:**

**10**

**Model answers**

a)

*Interest of Sehene and Gashonga in the transaction (See Law N° 007/2021 of 05/02/2021 governing companies, Art. 166, Paragraph One (2°)). **Yes.** Sehene and Gashonga have interest in the transaction between Sehene, Gashonga & Sons Plc. Sehene and Gashonga have interest in the company’s transaction as the **transaction in question was carried out between Sehene, Gashonga & Sons Plc and SG Ltd which is their company. As such, the two directors have a material financial interest in SG Ltd, which is a party to the transaction.***

b)

*The validity of the Board of Directors Resolution that allowed the transaction between Sehene, Gashonga & Sons Plc and SG Ltd is provided for by the N° 007/2021 of 05/02/2021 governing companies, Art. 169. This resolution was passed by a vote of five directors out of nine including Sehene and Gashonga. The votes by Sehene and Gashonga are **invalid** as they have interest in the transaction. Under the aforementioned Article “**A director who is interested in a transaction entered into or to be entered into by the company does not vote on a directors’ resolution. Where he she votes, the vote is invalid.**” Therefore, the Resolution of the Board of Directors is invalid, null and without effect as it was passed by **only 3 directors out of nine and among the directors who voted, Sehene and Gashonga were not allowed to by the Law.***

c)

*Whether failure by Sehene and Gashonga to disclose the interest in the contract between Sehene, Gashonga & Sons Plc can invalidate it (See Law N° 007/2021 of 05/02/2021 governing companies, Art 167). **No.** I do not think the failure by Sehene and Gashonga to disclose their interest in the contract between Sehene, Gashonga & Sons Plc and SG Ltd can invalidate it. The Law governing companies clearly shows under its article 167 that “**A failure by director to disclose his/her interest in the transaction does not affect the validity of any transaction entered into by the company, the director or controlling shareholder.**”*

d)

*Whether shareholders of Sehene, Gashonga & Sons Plc can invalidate the FRW 100 billion contract for supply of raw materials (See Law N° 007/2021 of 05/02/2021 governing companies, Art 168). The shareholders of Sehene, Gashonga & Sons are allowed to invalidate the FRW 100 billion transaction between Sehene, Gashonga and Sons Plc and SG Ltd as **it was entered into by the company in which a director (Sehene and Gashonga) is in any way interested. It may***

*be voided by the company within three (3) months of the transaction being disclosed to all the shareholders, whether by means of the Board of Directors' annual report or otherwise, unless the company receives fair value under the transaction. Under this transaction, as it was demonstrated Sehene, Gashonga & Sons Plc did not receive the fair value under the transaction as the raw materials were being sold at twice the price of market for the same raw materials and consequently the law allows the company to void this transaction.*

e)

*Legality of the transaction by Sehene and Gashonga to buy shares in Sehene, Gashonga & Sons Plc (Law N° 01/2011 of 10/02/2011 regulating capital market in Rwanda Arts. 42 & 69). The transaction by Sehene and Gashonga to buy shares in Sehene, Gashonga & Sons Plc is **illegal**. This transaction is illegal because the two directors **dealt in insider information** to acquire the shares in Sehene, Gashonga & Sons Plc. Under the Law on capital markets (Art 42), **an individual deemed to have engaged in insider dealing is a person who uses insider information to deal in capital market instruments which can influence the prices on the capital market**. The transaction is illegal as it may constitute an offence of **insider dealing is under the Law on capital market (Art. 69)** and as such Sehene and Gashonga should be prosecuted for *insider dealing*. Consequently, **“Any person who has an insider information and uses it in committing market abuse or in dealing in capital market instruments, commits an offence.***

*Upon conviction, he or she is liable to imprisonment for a term of not less than three (3) years but not more than five (5) years and a fine of not less than eighty million Rwandan francs (FRW 80,000,000) but not more than one hundred million Rwandan francs (FRW 100,000,000)”.*

## QUESTION SIX

### Marking guide

#### a. Comment of the annual report of directors

- The annual report of the directors does not meet the legal requirements for such a report. Under the Law governing companies (Art. 89), in respect with the accounting period to which the annual accounts relate, a report of directors for a company made in writing, and contrary to the report of directors for the accounting period 2019-2020 states any donations exceeding the prescribed amount including [...] political donations. As mentioned above, the Report of directors does not show the political donations the company made to the two major Rwandan political parties which is in violation of the law. 5

- Also, the Report is signed by Makosa, the Chairman of the Board of Directors of the company although the Law governing companies provides that the report (Art 89) is signed on behalf of the Board of Directors by two (2) directors of the company [in the case of Birayi Ltd which has nine (9) directors]. 5

**Maximum marks:**

**10**

## **b. Legal foundations of the Auditor’s report**

- The Auditor’s report legal foundations is the Article 135 of the Law governing companies which sets its contents and provides that it must comply with applicable auditing and assurance standards. 4
- The Members of the Board of Directors did not meet the requirement to cooperate with the auditor. 1
- The Board acted in violation of the provisions of the Article 134 of the Law governing companies which provides that “The Board of Directors of a company ensures that its auditors has a right of access at all times to the accounting records and other documents of the company, and that the auditor is entitled to require from any director [...] of the company such information and explanation as the auditor thinks necessary for the performance of his or her duties as auditor”. 5

**Maximum marks: 10**

## **c. Investigation ordered by the Minister**

- The Minister issues instructions requesting the Registrar General to investigate into the business of a local company or of a foreign company having its branch in Rwanda 4
- These instructions are issued where the Minister is satisfied that:
  - 1° for the protection of the interests of the public, the shareholders or creditors of a company, it is desirable that the affairs of a company should be investigated; 2
  - 2° it is in the public interest that the affairs of a company should be investigated; 2
  - 3° in the case of a foreign company, the competent authorities of another country requests that an investigation be made in respect with the Article 292 of the Law governing companies. 2

**Maximum marks: 10**

## **Model answers**

a)

*Comment of the annual report of directors. (See Law N° 007/2021 of 05/02/2021 governing companies, Art 89). The annual report of the directors does not meet the legal requirements for such a report. Under the Law governing companies (Art. 89), in respect with the accounting period to which the annual accounts relate, a report of directors for a company made in writing, and **contrary to the report of directors for the accounting period 2019-2020 states any donations exceeding the prescribed amount including [...] political donations. As mentioned above, the Report of directors does not show the political donations the company made to the two major Rwandan political parties which is in violation of the law.***

Also, the Report is signed by Makosa, the Chairman of the Board of Directors of the company **although the Law governing companies provides that the report (Art 89) is signed on behalf of the Board of Directors by two (2) directors of the company [in the case of Birayi Ltd which has nine (9) directors].**



b)

*Legal foundations of the Auditor's report* (See Law N° 007/2021 of 05/02/2021 governing companies, Art 135) and *whether the Board of Directors met the requirements by the Law to cooperate with the Auditor* (See Law N° 007/2021 of 05/02/2021 governing companies, Art 134). The Auditor's report legal foundations is ***the Article 135 of the Law governing companies which sets its contents and provides that it must comply with applicable auditing and assurance standards***. The Members of the Board of Directors did not meet the requirement to cooperate with the auditor. The Board acted in violation of the provisions of the Article 134 of the Law governing companies which provides that ***"The Board of Directors of a company ensures that its auditors has a right of access at all times to the accounting records and other documents of the company, and that the auditor is entitled to require from any director [...] of the company such information and explanation as the auditor thinks necessary for the performance of his or her duties as auditor"***.

c)

*Investigation ordered by the Minister* (See Law N° 007/2021 of 05/02/2021 governing companies, Art 295). The Minister ***issues instructions requesting the Registrar General to investigate into the business of a local company or of a foreign company having its branch in Rwanda***. These instructions are issued where the Minister is satisfied that:

- 1. for the protection of the interests of the public, the shareholders, or creditors of a company, it is desirable that the affairs of a company should be investigated.***
- 2. it is in the public interest that the affairs of a company should be investigated.***
- 3. in the case of a foreign company, the competent authorities of another country requests that an investigation be made in respect with the Article 292 of the Law governing companies.***

**END OF MARKING GUIDE AND MODEL ANSWERS**